No. 15,467

IN THE

United States Court of Appeals

For the Ninth Circuit

RICHMOND INVESTMENT COMPANY,
IRENE WOODS, et al.,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

APPELLANTS' OPENING BRIEF.

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JURISDICTIONAL STATEMENT.

The herein appeal is from a final judgment of the United States District Court, Northern District of California, Southern Division, condemning certain lands in the City of Richmond, County of Contra Costa, State of California, under Act of Congress, approved August 1, 1888, 25 Stat. 357 (U.S.C. Title 40, Sec. 257), the Act of February 26, 1931, 46 Stat. 1421 (U.S.C. Title 40, Secs. 258 (a) to (e); and the Act of October 14, 1940, commonly known as The Lanham Act (Public No. 849, 76th Congress) as amended.

Jurisdiction of this Court on appeal is conferred by Title 28, U.S.C. Sec. 1291. (Act of June 25, 1948, C. 646, Sec. 1, 62 Stats. 929.)

December 29, 1942 was the date of the Declarations of Taking, and the filing of the herein action.

Following the declaration of a National War Emergency on September 8, 1939, Congress passed the said Lanham Act (U.S.C.A., Title 42, Subchapter II, Section 1521), *to provide temporary wartime housing for defense workers.*

The Lanham Act, under which the herein condemnation action was filed refers only to one public purpose, that of temporary wartime housing for war workers in wartime industries, in specially determined localities.

No contention appears to be made by the condemnor that an interest in land is to be taken for any use other than such temporary housing use for war workers.

Consistent with the temporary nature of such use Congress provided for the termination of its authorization in that Act when the declared emergency ended. That occurred on July 25, 1947.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the United States District Court in and for the Northern District of California, Southern Division, Honorable Sherrill Halbert presiding, entered January 31, 1957.

The said action was filed at the instance of the Federal Public Housing Authority, condemning certain lands of numerous small lot owners in Richmond,

Contra Costa County, California, under the Lanham Act providing for temporary wartime housing for a limited classification of temporary wartime workers where such housing was temporarily needed.

(a) Stipulation.

In order to expedite the trial, the parties filed their stipulation (Transcript of Record, pages 13-14) submitting certain key issues to the trial court for determination; the general issue under the pleadings being

> "the legality and authority of the plaintiff to take, and for the purposes and uses all as more fully alleged in the complaint on file herein, the fee simple title to the subject property."

(b) Motions.

The more specific issues submitted to the trial court, under the aforesaid general issue, were presented under the further stipulation as follows:

> "and the parties hereto may by motion or responsive pleadings present such issues for determination by the Court."

Pursuant to said stipulation, the defendants filed their motions for judgment on each or all of the following grounds (Transcript of Record, pages 15-20):

1. On the pleadings that the complaint herein fails to allege facts sufficient to state a cause of action for taking full fee title for the temporary use authorized in the Lanham Act;

2. That the taking of the fee title was an excessive taking of interest in lands beyond the quantum

necessary for the temporary housing use for which it was condemned;

3. That the plaintiff has failed to prove a cause of action for the condemnation of fee title;

4. That the funds on deposit in this court are limited to payment for the temporary use of the lands taken;

5. That the interest taken in condemnation is a temporary interest which may be described as a terminable fee which terminated upon the completion or termination of the temporary use of temporary housing as specifically described in the Lanham Act;

6. That the taking of the fee title to the lands of these defendants is void to the extent of the excess interest beyond the quantum necessary for the temporary housing use for which it was taken and as expressly defined in the Lanham Act;

7. That the disposal or use of the lands of defendants herein other than for defense housing as authorized in the Lanham Act of the time of taking said lands in those condemnation proceedings, be restrained and enjoined.

The above-mentioned motions and action were by agreement of the parties submitted on oral argument by counsel for both parties, and written memoranda were filed with the trial court. Thereupon, the trial court filed herein a "Memorandum and Order" citing a previous decision of the United States Court of Appeals for the Ninth Circuit in *Lewis v. United States,* 200 Fed. (2d) 193, and stating that

> "This Court is bound by the decision of the Court of Appeals, so no useful purpose would be served by going beyond this statement of the Court's conclusion."

This appeal does not concern the values of the lands condemned which are covered by the said stipulation, but has been centered upon specific issues, principally a single issue under the pleadings and by stipulation of the parties as follows:

> Was the Housing Administrator authorized by Congress under the Lanham Act to acquire *by condemnation,* the fee simple title absolute, in private lands instead of a lesser quantum of interest, such as leasehold, necessary for the *temporary wartime housing* as specifically described in said Lanham Act?

FACTS.

On and before December 29, 1942, the appellants herein were the private owners of parcels of land adjacent to the wartime shipyards in the port of the City of Richmond, Contra Costa County, California. On said date the herein condemnation action was filed at the instance of the Commissioner of the Federal Public Housing Authority of the United States, herein referred to as the Housing Administrator.

No service of copies of the Declarations of Taking or Judgments entered thereon were ever made upon the defendants. No claim or allegation is made by the Housing Administrator that any effort was made to

acquire the lands by voluntary purchase or lease before the filing of condemnation proceedings.

The plaintiff condemnor relies upon the "Act of Congress approved August 1, 1888, 25 Stat. 357 (U.S.C. Title 40, Sec. 257)" for his authorization to condemn the fee title absolute. However that Act merely provides *generally* that whenever the Secretary of the Treasury or "any other officer of the Government *has been or shall be authorized* to procure real estate" for public use "he shall be authorized to acquire the same for the U. S. by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so".

It is noted that this Act does not grant any discretionary power to condemn a greater quantum of interest in land than is necessary to the public use specified. There is no exception in the Act to the laws of eminent domain.

As said in *U. S. v. Certain Lands in the Town of Narragansett,* 145 Fed. 654, the statute pleaded (U.S.C. 40, Sec. 257), "does not confer a general authority to acquire land, but only authority to institute condemnation proceedings in furtherance of, or in execution of *authority otherwise granted* to procure real estate for public purposes". The test in eminent domain of what quantum of interest in land can be condemned for a temporary use still applies. We are required to examine the Act of Congress whereby the officer of the Government "has been or shall be authorized". This brings us to the Lanham Act which provides as follows:

"Sec. 1521 (title 42) Federal Works Administrator's Powers Respecting Defense Housing.

"In order to provide housing for persons engaged in national-defense activities, and their families, and living quarters for single persons so engaged, in those areas or localities in which the President shall find that an acute shortage of housing exists or impends which would impede national-defense activities and that such housing would not be provided by private capital when needed, the Federal Works Administrator (hereinafter referred to as the 'Administrator') is authorized:

(a) To acquire prior to the approval of title by the Attorney General (without regard to section 1339 of Title 10 and section 5 of Title 41), improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to sections *40a* and 34 of Title 40, or any time limit on the availability of funds for payment of rent), *or condemnation* (including proceedings under sections 257, 258, 361-368, and 258a-258e of Title 40).

"(etc.) * * *" (Our italics.)

SPECIFICATION OF ERRORS.

1. OMISSIONS IN FINDINGS OF FACT AND CONCLUSIONS OF LAW.

There is no evidence in the record, and no finding of fact or conclusion of law by the Trial Court that the Lanham Act vests in the Housing Administrator his claimed *discretionary power* to decide on the quantum

of interest in land he will take *by condemnation* for the temporary use specified by Congress.

This omission is a vital error going to the heart of the herein appeal. The Administrator arbitrarily elected to take the fee title absolute by condemnation for merely a temporary housing use. The Administrator erroneously assumed that Congress gave him such personal discretion. However, Congress gave no such power and the well established rules in eminent domain deny such power, and restrict the taking of interests in land by condemnation to the quantum necessary for the public use described expressly in the enabling Act of Congress. Any excess taking is unlawful and void.

Appellants are entitled to a direct and specific response to this point by the condemnor herein, by citing the exact words of the Lanham Act relied upon for such claimed discretionary power.

It is earnestly urged that there must be a specific finding of fact covering this factual issue in order to support the judgment in this case regardless of any precedent in the *Lewis* case (supra). It is submitted that the defendants, appellants herein, are entitled to proper and adequate findings of facts in this case, regardless of whatever facts may have been found in any other case in which the herein defendants were not parties.

The Lanham Act relied upon by the Housing Administrator for his authorization by Congress does not expressly and without resort to inference grant dis-

cretionary power to him whereby he can elect to take *any quantum of interest in land* he might deem proper, even to the extent of disregarding the temporary character of the use. A finding of fact relating to the Lanham Act on this factual point is necessary to support the judgment herein.

It appears that the Act authorized the Housing Administrator to SELECT the parcels of land which in his discretion would be suitable. But *selecting* the land is far different from a grant of discretion to determine the *quantum of interest* to be taken.

Finding of Fact number IV, is misleading in that it relates merely to the *selection* of the particular land. (See Transcript of Record, page 24.)

Conclusion of Law numbered II, is likewise misleading in that it merely relates to the *selection* of the particular land for condemnation. (See Transcript of Record, page 26.)

There is no issue presented herein that the lands in question were not properly "selected". The *quantum of interest in said lands* is the vital issue in this case.

The defendants seek the protection of this Appellate Court regardless of the *Lewis* case (supra) in their rights to a direct finding in this connection relating to the specific language in the Lanham Act.

It seems clear that if the Lanham Act was incorrectly construed in the previous *Lewis* case by reading into that statute an *implied* provision granting the discretionary power in question, although no such express grant of power is actually stated therein, the

Court of Appeals it not bound by that previous decision based upon different findings of facts. It is of course not necessary to perpetuate a mistake or oversight in reading the Lanham Act as we believe happened in that case. As Justice Frankfurter said in *Halvering v. Hallock,* 309 U.S. 106, 125 A.L.R. 1368:

> "We recognize that stare decisis embodies an important social policy. It represents an element of continuity in the law, and is rooted in the psychologic need to satisfy reasonable expectations. But stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience."

This appeal pinpoints the question:

> Did Congress in the Lanham Act, *expressly* authorize the Housing Administrator to exercise his uncontrolled discretion in taking by condemnation, more than a temporary use or interest in lands for merely a temporary wartime housing use?

The answer to the above question involves the construction of the specific wording of the Lanham Act, in the light of established rules of law in eminent domain, in order to meet the basic issue in this case.

2. THE LANHAM ACT. ITS PURPOSE.

The purpose or use specifically described in the Lanham Act was limited to a temporary housing use. It is not disputed that pursuant thereto, temporary housing was constructed on the land to accommodate war-workers in the nearby Richmond shipyards.

The need for temporary housing was limited in the Act to "persons engaged in national defense activities", being the shipyards in Richmond, California in the present instance. The Housing Administrator has never claimed that the condemnation was for any other use than such temporary housing.

That a temporary use was intended by Congress in the Lanham Act is indicated in *U.S. v. City of Chester,* 144 Fed. (2d) 415, wherein the Government condemned a leasehold in 13½ acres, instead of the fee simple title. The Court observed that "The dwellings were to be of temporary construction designed for the present war emergency in order to obviate a shortage of housing for war-workers in the Chester area."

It was further said in Congressional Comments, p. 76 of the U. S. Code of Congressional Service, regarding the Lanham Act:

> "It was never considered by the Committee that this housing should be designed for use as slum-clearance projects or to provide subsidized housing for persons of low income.
>
> The present Act permits the disposal of any of the housing built under its authority as soon as they are completed, and directs that all of them shall be disposed of after the emergency has ended."

The Act clearly states two procedures for the Administrator to acquire interests in privately owned lands:

a. By ordinary Civil process of purchase, donation, exchange, or lease.

b. By CONDEMNATION.

The latter process of acquisition being an extraordinary process, is bound around by the well established rules of law in eminent domain.

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3. APPLICABLE RULES IN EMINENT DOMAIN.

(a) Acts of Congress such as the Lanham Act, insofar as authorization to condemn privately owned lands is concerned, must be *strictly construed,* and are limited by the rules in eminent domain to the condemnation of only a quantum of interest actually necessary for the specific use authorized.

68 A.L.R. 837.

> "The interest taken by an exercise of the power of eminent domain always depends on the construction of the statute, authorizing the taking, and is limited to the express terms or clear implication of the statute in which the grant is contained."
>
> *Puerto Rico Ry. Light & Power Co. v. U.S.* (1st Circuit), 131 Fed. (2d) 491;
>
> *U.S. v. Parcel of Land (Square South, I.C.),* 100 Fed. Supp. 498 at 504, U.S. Court, Dist. of Col.

"The laws authorizing exercise of the sovereign power of eminent domain are to be strictly followed."

U.S. v. 2.4 Acres of Land, 138 Fed. (2d) 295 (7th Circuit).

"The authority to condemn will be strictly construed in favor of the owner of the property taken and against the condemnor, and the authority must be strictly pursued."

Warm Springs Irrig. Dist. v. Pac. Live Stock Co. (1921, C.C.A. 9th), 270 Fed. 560.

For example, a power transmission line over land requires only an easement for which the fee title could not be condemned, as that would be an excessive taking. (Authorities collected in 90 A.L.R. 1020; 14 A.L.R. 1350; 18 Am. Jur., "Eminent Domain", 34, 109, 110, 115; 20 C.J. 1222.)

(b) The quantum of interest in lands to be condemned is limited to the specific public purpose stated in the particular Act of Congress.

If a clear discretionary power is not expressly provided in the Act but is merely implied and assumed by the Agency, the power does not exist.

"The exercise of the power of eminent domain being against common right, cannot be implied or inferred from vague or doubtful language, but must be given in express terms or by necessary implication. When the right to exercise the power can only be made out of argument and inference, it does not exist."

Lewis on Eminent Domain, Vol. 1, Sec. 371.

"When an easement will be sufficient, no intendment or rule of liberal construction will be indulged to support an attempt to obtain any greater interest or estate."

Shoemaker v. U. S., 147 U.S. 282;
Cincinnati v. Vester, 33 Fed. (2d) 242;
1 Nichols on Eminent Domain, Sec. 150;
Cooley's Constitutional Limitations (8th Ed.), Vol. 2, p. 1193.

It seems to follow, that any doubt concerning the quantum of interest in lands which Congress authorized the Housing Administrator to take by the alternative procedure of condemnation under the Lanham Act is property resolved in favor of the private land owner. (Further discussion and authorities in 18 Amer. Jur. 741, Eminent Domain, Sec. 115 and Sec. 26; Ann. Cas. 1918 A, page 807; 10 Ruling Case Law, 88.)

(c) Temporary quantum for temporary use.

The Court of Appeals (9th Circuit) in this proceeding will doubtless take into consideration its own previous ruling as stated in *Warm Springs Irr. Dist. v. Pacific L. S. Co.* (9th Circuit), 270 Fed. 560 (for a reservoir site), that where the interest to be taken by condemnation is not expressly stated in the statute, the condemnor is presumed to take no greater interest than an easement, if an easement is sufficient to satisfy the purpose of the taking. Surely the *Lewis* case (supra) is not intended to reverse the ruling of the 9th Circuit in the above cited *Warm Springs* case.

4. BURDEN IS ON CONDEMNOR TO ALLEGE AFFIRMATIVELY AND TO PROVE NECESSITY FOR FEE TITLE AS QUANTUM FOR USE SPECIFIED IN ACT.

Failure or omission of the condemning agency of the Government to allege and prove affirmatively that fee title is the necessary quantum for the particular temporary use authorized, is an admission that no necessity exists beyond the temporary housing intended. The position of the Government or Agency as a litigant seeking to establish its statutory rights in condemnation proceedings is exactly the same as that of any other litigant. On this point, it is respectfully urged that the trial court disregards the decision of the Court of Appeals (9th Circuit), in the case of:

E. C. Shevlin Co. v. U. S. (9th Circuit), 146 Fed. (2d) 613 at 615.

The failure of such proof was held to be fatal to the taking of private property in the case of *Puerto Rico Ry. L. & P. Co. v. United States* (1st Circuit), 131 Fed. (2d) 491 at 500. That case seems to emphasize the strict construction placed upon any Congressional authorization in eminent domain, and established policy is to give the benefit of any doubt in every case of condemnation, to favor the private property rights where Congress delegates the power of eminent domain to an agency.

5. WHEN THE FEDERAL ACT IS SILENT AS TO THE QUANTUM AUTHORIZED FOR CONDEMNATION THE STATE STATUTE IS FOLLOWED, SUBJECT TO FUNDAMENTAL PRINCIPLES IN EMINENT DOMAIN.

Since the Lanham Act omits to define, by express limitation, the quantum of interest in lands that the agency may take by condemnation for a temporary use, and does not expressly delegate discretionary power to the agency to take whatever quantum it might desire to take, then the California laws should control.

Under California statutes the purpose or use of "temporary housing" for war-workers during a particular period of national emergency, would be classified as a public purpose for which an easement (not a fee title) would be proper. (Calif. Code of Civil Procedure, Sec. 1239.)

It seems significant that the California statutes covering the exercise of the right of eminent domain clearly and expressly state when the fee title may be condemned, and when easements are proper.

> *C. C. P.* 1239. Estates in Land Subject to Condemnation: "The following is a classification of the estates and rights in lands subject to be taken for public use:
>
> 1. A fee simple, when taken for public buildings or grounds, or for permanent buildings, for reservoirs, etc.
>
> 2. An easement, when taken for any other use;
>
> * * * * * * *"
>
> "It has been held that laws authorizing the exercise of the sovereign power of eminent do-

main are to be strictly followed, Delaware L. & W. R. Co. v. Morristown, 276 U. S. 182, 48 S. Ct. 276, 72 L. Ed. 523, 56 A.L.R. 756; City of Cincinnati v. Vester, 281 U. S. 439, 50 S. Ct. 360, 74 L. Ed. 950, and that the practice and procedure in condemnation proceedings in Federal Courts must be according to the forms and methods of procedure afforded by the law of the State in which the court sits. United States v. Miller, 317 U. S. 369, 380."

U. S. v. 2.4 Acres, etc., 138 Fed. (2d) 295 (Ill.), (7th Circuit), Oct. 26, 1943.

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6. **TO CONDEMN AN EXCESS QUANTUM OF INTEREST IN LANDS IS TO TAKE FOR OTHER THAN PUBLIC USE.**

The weight of authorities reviewed in 79 A. L. R. 515-516, support the rules discussed hereinabove in eminent domain:

" 'Inasmuch as property cannot constitutionally be taken by eminent domain except for the public use, it follows that no more property shall be taken than the public use requires; and that rule applies both to the amount of property and the estate or interest in such property to be acquired by the public.

" 'If an easement will satisfy the requirements of the public, to take the fee would be unjust to the owner, who is entitled to retain whatever the public needs do not require, and to the public which should not be required to pay for more than it needs.

" 'Furthermore, it is universally recognized that a grant of the power of eminent domain will not

be extended by implication, and that, when an easement will satisfy the purpose of the grant, the power to condemn the fee will not be included in the grant unless it is so expressly provided.

" 'Accordingly, it is well settled that when land is taken for the public use, unless the fee is necessary for the purposes for which the land is taken, as, for example, when land is taken for a schoolhouse, or the statute expressly provides that the fee shall be taken, the public acquires only an easement.' "

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7. NON-EXISTENCE OF EXPRESS DELEGATION OF DISCRETIONARY POWER CLASSIFIES CASES APPLYING RULE IN EXCESS TAKING IN EMINENT DOMAIN.

The numerous federal as well as state authorities in eminent domain may be classified and substantially harmonized into two groups:

(a) Those cases relating to condemnations under particular enactments by Congress, such as the Second War Powers Act, in which *discretionary power is expressly delegated* by the legislative branch of the Government to an executive officer or agency to take whatever quantum of interest in lands the agency might choose.

(b) Cases in which *no such discretionary power has been expressly delegated* by Congress.

In the present case, as the authorities which we have hereinabove discussed seem clearly to show, the discretionary power in question claimed by the Housing Administrator, must be clearly shown by express

authorization in the Lanham Act, and *cannot be implied* from any general wording of the statute.

We can only submit that there was no such power granted by Congress in the Lanham Act. When it is not expressly stated in the Act it does not exist. It follows that since the Lanham Act contains no such express delegation of discretionary power to the Housing Agency, this case does not raise any question of bad faith, or capricious or arbitarary taking, but simply an excess taking.

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8. QUESTIONS INVOLVING EXCESS TAKING BY CONDEMNATION ARE JUDICIAL QUESTIONS.

We believe that the opinion in *U. S. Tenn. Valley Authority v. Welch,* 327 U. S. 546, states the rule applicable in the present instance as follows:

> "It is well settled, of course, that ordinarily, the necessity of taking for public use is a legislative and not a judicial question, and, when determined by the legislature, or by an agency created for that purpose, is not subject to review by the courts. It is equally well settled, however, that 'the nature of the use, whether public or private, is ultimately a judicial question.'
>
> Consequently, where property is taken in excess of that required for the authorized public use, the excess to be used for some other purpose, the courts have power so to declare." (Citations.)

Whether a Government Agency abuses its power or inadvertently makes a mistake in the exercise of an assumed power beyond its authorization, in either

event such acts of the agency are void and should be so declared and discontinued by a judicial determination.

Cincinnati v. Vester (C.C.A. 6th), 33 Fed. (2d) 242, 68 A.L.R. 831, affirmed in 281 U.S. 439;
Northwestern Fertilizing Co. v. Hyde Park, 97 U.S. 659, 666, 14 A.L.R. 1350;
Rindge Co. v. Los Angeles County, 262 U.S. 700;
Sears v. Akron, 246 U.S. 242;
Hairston v. Danville & W. R. Co., 208 U.S. 598;
U. S. v. Gettysburg Elec. R. Co., 160 U.S. 668.

The Tenn. Valley Authority Act expressly granted discretionary power to the Authority to condemn any interest in property that the Authority "deems necessary for carrying out the purposes of this Act." Congress did not delegate any such broad discretion to the Housing Agency in the Lanham Act.

Mr. Justice Reed's concurring opinion in *U. S. Tenn. Valley Authority v. Welch,* 327 U. S. 546, supports the rule as follows:

> "It is my opinion that the TVA is a creature of its statute and bound by the terms of that statute, and that its every act may be tested judicially, by any party with standing to do so, to determine whether it moves within the authority granted to it by Congress. (Amer. School of M. Healing v. McAnnulty, 187 U. S. 94.)"

Justice Reed further ruled:

> "This taking is for a public purpose, but whether it is or is not is a judicial question. Of

course, the legislative determination has great weight but the constitutional doctrine of Separation of Powers would be unduly restricted if an administrative agency could invoke a so-called political power so as to immunize its action against judicial examination in contests between the agency and the citizens. The former cases go no further than this. (Citing: U.S. v. Gettysburg Elec. R. Co., 160 U. S. 668, 680; Rindge Co. v. Los Angeles County, 262 U. S. 700, 709; Old Dominion Land Co. v. U. S., 269 U. S. 55, 66; Cincinnati v. Vester, 281 U. S. 439, 446.)"

"Consequently, where property is taken in excess of that required for the authorized public use, the excess to be used for some other purpose, the courts have power so to declare."

"The taking of such excess land is not for a public use. Whether the particular use authorized is public is always a question for the judiciary."

"It is said that, in the construction of statutes conferring the power of eminent domain, every reasonable doubt is to be resolved adversely to the right; that the affirmative must be shown, as silence is negation; and that unless both the spirit and letter of the statute clearly confer the power, it cannot be exercised. Fertilizing Co. v. Hyde Park, 97 U. S. 659, 666, 24 L. Ed. 1036."

CONCLUSION.

In conclusion, the simple and direct statements in the Lanham Act show that Congress was seeking only to meet certain abnormal and temporary housing

needs arising in a period of National Emergency. The wording of the Act states the temporary housing purpose and use as the precise limit of any powers that Congress intended to grant to the Housing Administrator. The Administrator cannot enlarge such limits by inference or by any assumed or implied broad interpretation of the text of that Act. These conclusions seem to be well-established by the facts and the authorities cited hereinabove.

The appellants submit that Congress intended to provide only temporary emergency housing for a restricted type of temporary war workers in its enactment of the Lanham Act; that if the agency elected to ignore its authorization to acquire interests in land by voluntary purchase, lease, or gift, and instead elected to condemn, then by such election of procedure, the agency necessarily chose to submit to the existing laws and established rules in eminent domain limiting the quantum of his taking.

The Housing Agency is not able to cite any provision or wording in the Lanham Act which expressly grants to it the discretionary power in question and at issue in this case. Consequently, the attempted taking herein of the permanent fee title absolute for merely temporary housing is an unlawful taking of an excess quantum of interest in private lands not for the public use as authorized by Congress, and is therefore void. Such excess taking fully justifies reversal of the judgment entered herein, and restoration of the lands to their respective private owners since their temporary use under the Lanham Act expired and

was fully satisfied long ago in 1947 when the National Emergency was terminated by the President.

Dated, San Francisco, California,
May 28, 1957.

Respectfully submitted,
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